Attorney's Docket No. 1033048-000036

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
)	
Glenn Ferguson et al.)	Group Art Unit: 2128
)	
Application No.: 09/766,652)	Examiner: FERRIS III, FRED O
)	
Filed: January 23, 2001)	Appeal No.:
)	
For: DATA MODEL FOR)	
AUTOMATED SERVER)	
CONFIGURATION)	
)	
)	

APPEAL BRIEF

Mail Stop APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This appeal is from the decision of the Primary Examiner dated May 5, 2005, finally rejecting claims 1,4,6 and 9-11, which are reproduced as the Claims Appendix of this brief..

☐ A check covering the ☐ $250.00 (2402) ☐ $500.00 (1402) Government fee is filed herewith.

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The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Table of Contents

I.   Real Party in Interest

The subject application is assigned to Opsware, Inc, the successor in interest to Loudcloud, Inc.

II.   Related Appeals and Interferences

There are no other prior or pending appeals, interferences or judicial proceedings which may be related to, directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III.   Status of Claims

The application contains claims 1-11, all of which are currently pending. Claims 2, 3, 5, 7 and 8 have been identified as containing allowable subject matter. The remaining claims, namely claims 1, 4, 6 and 9-11 stand finally rejected, and form the basis for this appeal.

IV.   Status of Amendments

There were no amendments filed subsequent to the final Office Action.

V.   Summary Claimed Subject Matter

The subject application discloses a data model that represents the relationships of various entities that constitute a computer network. One of the applications of such a data model is in the context of a managed services provider, which is responsible for provisioning and maintaining servers and other network devices that support the web sites of multiple customers. See, for example, the specification at page 3, line 1 to page 4, line 17.

A high-level overview of an exemplary data model is illustrated in Figure 11. The data model constitutes a schema for storing different types of data in a manner that facilitates their retrieval to support a particular function. The data model stores

information pertaining to a number of different entities in the network, and their relationships to one another. (Page 16, line 24, to page 18, line 23). The claims of the present application are particularly directed to the queues entity 1114.

In one application of the claimed invention, wherein a number of network servers and/or other devices are under the control of a managed services provider, queues can be employed to send commands to each of the managed devices. Referring to an example of such a system illustrated in Figure 3, an agent 304 can be resident on each device. Queues of commands are retrieved from a database 302 and sent to the appropriate agents, for execution at the respective devices. (Page 11, line 7 to page 12, line 6; page 100, lines 1-7).

The queues entities that are the subject of the pending claims are illustrated in greater detail of Figure 18 of the application. As depicted therein, the data model comprises a number of entities 1802-1814. Each of these entities can be implemented as a table in a database, examples of which are disclosed on pages 100-106 of the application. At least some of these tables are related to one another, for example, in a many-to-one manner. (Pages 100-106).

VI. Grounds of Rejection to be Reviewed on Appeal

The final Office Action presents a single ground of rejection for review on this appeal. Claims 1, 4, 6, and 9-11 stand finally rejected under 35 U.S.C. § 103, as being unpatentable over the Bowman-Amuah patent (US 6,345,239) in view of the User's Guide for the Oracle Intelligent Agent, Release 8.1.7.

VII. Argument

The claims recite a data model that comprises a plurality of each of a number of different types of entities. For instance, and with exemplary reference to Figure 18, claim 1 recites that the data model comprises a plurality of agent queues entities (1802) that represent lists of tasks to be performed, agent queues commands entities (1804) that relate the plurality of agent queues entities with specific commands, agent command output

entities (1806) that represent the agent command outputs, and agent commands entities (1808) that represent specific agent commands. The final Office Action relies upon the Bowman-Amuah patent (US 6,345,239) as the primary reference, and alleges that it discloses most of the elements recited in the claim.

However, the final Office Action has not shown that this primary reference discloses a *data model* that is comprised of the combination of entities recited in the claim. The Bowman-Amuah patent is concerned with the demonstration of business capabilities in an e-commerce environment. As stated in the first paragraph of column 2, the objective of the patent is "to present system capabilities to customers for sales purposes."

With reference to the first element recited in claim 1, namely "a plurality of agent queues entities that represent a list of tasks to be performed by the intelligent agents on a computer network," the final Office Action refers to the Bowman-Amuah patent at column 11, lines 49-65; column 69, line 55; column 73, line 65; and Figures 22-35. However, none of these cited portions of the patent discloses a plurality of agent queues entities that form a component of a data model. For instance, column 11, lines 49-65 describes how a communication session is conducted between two parties. This section of the patent was apparently cited for its recitation of a "sequence of required tasks." This disclosure has nothing to do with a data model, let alone agent queues entities that form a component of a data model. Rather, it is describing the actual physical process that is used to convey data between the two entities.

The next portion of the patent referenced in the rejection, namely column 69, line 55, was apparently cited because it also mentions "tasks." Again, however, this disclosure has nothing to do with a data model, nor the particular entities that make up a data model. Rather, it relates to the network management *process* that is illustrated in Figure 24.

Similarly, the last referenced portion of the patent, column 73, line 65, has nothing to do with a data model that represents command queues in a network system.

The foregoing discussion of the first element of claim 1 is illustrative of the deficiencies in the final rejection of the claims. The rejection of the claims relies upon isolated portions of the reference that contain terminology analogous to that appearing in the claims. However, the *teaching* of the reference as a whole, in so far as that terminology is concerned, is entirely different from the subject matter recited in the claims. This is perhaps best exemplified by the discussion of the word "entity." In the context of the claims, entities are components of the data model that contain specific types of information relating to the command queues. For example, the agent queues entities represent a list of tasks to be performed by the intelligent agents. The agent queues commands entities relate the agent queues entities with specific agent commands and agent command outputs. In responding to Appellants' previous arguments that the Bowman-Amuah patent does not disclose entities of this nature, the final Office Action states that the patent "teaches an _entity_ as a _network resource_ (column 40, line 26) as does the claimed invention." (emphasis in original). However, the referenced portion of the patent does not disclose that an entity is a network resource. Rather, it states that "A network *customer* is an entity that leases network resources" (emphasis added). This disclosure has absolutely nothing to do with the types of entities that are recited in the claim. It is directed to an entirely different concept, i.e. a person, which is consistent with the e-commerce environment to which the patent is directed.

The final Office Action does not demonstrate that the Bowman-Amuah patent discloses a *data model* that is comprised of the combinations of entities, each containing data relating to an aspect of command queues, as recited in the claims. As set forth in M.P.E.P. §2143, one of three criteria for a prima facie case of obviousness is that the references must teach all of the limitations of the claims. The final Office Action has not demonstrated that the references teach any of the features recited in the claims. At best, the final Office Action only shows that the Bowman-Amuah patent contains some of the same

terms as the claims, but it does not show that those terms are being used in the same manner as in the claims, nor that they have the relationships recited in the claims.

The rejection of claims 1, 4, 6 and 9-11 is not properly founded in the statute, and should be reversed.

VIII.   Claims Appendix

See attached Claims Appendix for a copy of the claims involved in the appeal.

IX.   Evidence Appendix

There is no Evidence Appendix for this Brief.

X.   Related Proceedings Appendix

There is no Related Proceedings Appendix for this Brief.

Respectfully submitted,

Buchanan Ingersoll PC

Date   February 21, 2006   By: _____

James A. LaBarre
Registration No. 28,632

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

VA 845305.1

VIII. CLAIMS APPENDIX

The Appealed Claims

1. A queues data model for interacting with intelligent agents that perform tasks on a computer network by relating a list of tasks to be performed by the intelligent agents with specific agent commands and agent command outputs, said data model comprising:

a plurality of agent queues entities that represent a list of tasks to be performed by the intelligent agents on a computer network;

a plurality of agent queues commands entities that relate the plurality of agent queues entities with specific agent commands and agent command outputs;

a plurality of agent command output entities that represent the agent command outputs; and

a plurality of agent commands entities that represent the specific agent commands to be executed by the intelligent agents.

4. A data model for relating commands and command outputs of intelligent agents of a computer network with queues associated with the intelligent agents, comprising:

a plurality of agent queue command entities for relating agent queues to agent commands and agent command outputs;

a plurality of agent queues entities representing said agent queues, which are a list of tasks to be completed by an intelligent agent on a computer network;

a plurality of agent command output entities representing said agent command outputs; and

a plurality of agent commands entities representing said agent commands.

6. A queues data model for characterizing the interaction of queues entities, comprising:

a plurality of agent queues entities;

a plurality of agent queue commands entities;

a plurality of agent command output entities;

a plurality of agent commands entities; and

a plurality of agent command text entities.

9. The data model of Claim 6, wherein said agent queues entities is used to indicate to agents a list of tasks to be performed and may optionally relate to multiple agent queues entities and may relate to said agent queue commands entities by a one-to-many relationship.

10. The data model of Claim 6, wherein said agent queue commands entities relate to said agent queues entities and said agent commands in many-to-one relationships and to said agent command output entities in a one-to-many relationship.

11. The data model of Claim 6, wherein said agent command text entities relate to said agent commands entities by a many-to-one relationship.